

## Agreement in Principle

**Mr VICTOR DOMINELLO** (Ryde) [10.03 a.m.]: I move:

That this bill be now agreed to in principle.

From the outset I acknowledge that this is a complex policy area and I intend the Environmental Planning and Assessment Amendment (Boarding Houses) Bill 2010 to serve as a consultation draft. This will enable local councils, boarding house operators, tenants' advocacy groups and the wider community to provide feedback and make recommendations. The complexity of the issue of illegal boarding houses has increased following the large number of international students arriving in New South Wales. As the Commonwealth is responsible for controlling international student numbers, it needs to provide universities with real incentives to build more on-campus accommodation. Local councils should be responsible for planning, which includes the location, design and safety of boarding houses. Local councils must have the resolve to take enforcement action against illegal operations. Whilst this bill will go some way towards alleviating the problems associated with illegal boarding houses, this issue requires the involvement of all three levels of government.

In my electorate of Ryde there has been an enormous increase in the number of illegal boarding houses over the past two years. Most of these are situated in the suburb of Marsfield, near the Macquarie University campus in North Ryde. The following statistics are instructive. Currently at Macquarie University there are 1,895 beds for both on- and off-campus student accommodation. However, the international student population at Macquarie University in 2009 was 12,396. There is clearly a gross undersupply of campus accommodation. These figures on the shortfall of campus accommodation are conservative as they do not take into account interstate students or students from regional areas who also require accommodation. The undersupply of campus accommodation for students has resulted in a proliferation of unauthorised boarding houses.

What normally takes place is that investors, often from overseas, purchase large family homes and convert them into boarding houses through the partitioning of bedrooms, common living areas and garages, thereby creating sleeping accommodation for up to 15 or more lodgers. Owners of such premises may run the boarding houses themselves but often outsource the job to a friend or associate who is instructed to let out individual rooms at \$150 to \$250 per week. By way of illustration, assume there are 10 lodgers each paying \$200 per week to live in an illegally modified three-bedroom house. This amounts to more than \$100,000 per annum. This is in circumstances where an unmodified three-bedroom house being rented out to a normal family would rent for about \$30,000 gross per annum. Anecdotally, most lodgers pay cash. Therefore, if the operator fails to declare and pay tax on the cash bill receipts, this effectively amounts to a gross income of about \$150,000 per annum.

The profits from operating a boarding house illegally are staggering. In some instances landlords will lease premises to a tenant. The tenant will then, as part of a commercial enterprise, arrange for an inappropriate number of lodgers to reside within the premises. Lodgers are further exposed to exploitation, as they are not protected under the provisions in the Residential Tenancies Act. Unscrupulous operators place the pursuit of profit ahead of the welfare of the lodgers. Premises are illegally modified to shoehorn in as many lodgers as possible. This may include substandard electrical modifications when undertaking unauthorised modifications to internal rooms. This brings into play fire and safety concerns.

Overcrowding also raises health and hygiene concerns, especially where there are not enough council bins to cope with the overcrowding. Garbage bins that overflow attract vermin. In a desire to maximise profit, unscrupulous operators also fail to maintain the exterior of the buildings and gardens. I have received numerous reports of swimming pools ending up as algae-laden mosquito pits. These fire and health concerns not only affect the lodgers but also affect the neighbours. Likewise, a failure to maintain the exterior of the premises and the gardens has a significant impact on the amenity of the neighbourhood. This situation is not specific to Ryde. It is occurring across Sydney and New South Wales, particularly where there are tertiary institutions with students, especially international students, seeking accommodation near campuses. In a recent letter to me the Redfern Legal Centre noted:

It is our experience that the problems being faced in the Ryde area, of severe overcrowding, unsafe housing and students and young people being taken advantage of, are widespread. While this has been a trend for a number of years, it is becoming more and more extreme. You only need to stand on the corner of Castlereagh and Goulburn Streets in the CBD and look up at the high rises around you, to see unit after unit with curtains and newspapers up in the windows of sunrooms and enclosed balconies. Unscrupulous head tenants man the lifts all day with multiple swipe cards letting the residents in and out of their units.

The current laws governing the operation of boarding houses in New South Wales are hopelessly inadequate. Councils find it difficult and expensive to gather evidence and to prosecute illegal boarding house operators. Furthermore, the current penalties clearly are an insufficient deterrent.

I will deal, first, with the issue of evidence gathering. The best evidence is evidence obtained after a council

officer has inspected the premises, or direct evidence from lodgers as to the nature of the accommodation. However, the difficulty is that the boarding houses ostensibly are operated within residential properties. Council's powers of entry and inspection, conferred by the Local Government Act, are not exercisable in relation to residential premises without the permission of the occupier or under the authority conferred by a search warrant. Council can also obtain entry for the purpose of inspecting work being carried out under an approval. However this provides no comfort when many boarding house operators do not seek approval in the first place.

The Environmental Planning and Assessment Act also confers powers on councils to enter and inspect premises. However, as applies currently in the Local Government Act, councils cannot inspect a residential premise without consent or without a search warrant. Accordingly, if a council wanted to inspect premises to ascertain whether an illegal boarding house was being run, council would first require the consent of the occupier. Illegal boarding house operators will either decline consent or delay entry to remove any incriminating evidence. The difficulty of obtaining direct evidence from a lodger as to the nature of accommodation is that the unscrupulous operators will coach the lodgers about what to say—for example, that they are members of the family and visiting from overseas. The difficulty of obtaining appropriate evidence translates directly into a difficulty to obtain a successful prosecution.

If the evidence relied upon is simply circumstantial that will add significantly to the complexity, length and costs of the prosecution. In these circumstances, councils will weigh up whether to expend financial and valuable resources to prosecute boarding house operators, even when there is a better than even chance of successful prosecution. In reality, councils generally will not spend ratepayers' money by commencing proceedings unless there are good prospects of success. Finally, under the current legislative provisions, if a council formed the view that an illegal boarding house was in operation, it could issue a penalty infringement notice of \$750 in the case of an individual, or \$1,500 in the case of a corporation. This is a vacuous disincentive, having regard to the profits that can be made.

I turn now to the important provisions of the bill. Schedule 1, clauses 1 to 3 will enable authorised officers to enter premises without notice to collect evidence if they have reasonable grounds to believe that a boarding house is in operation. This amendment will enable them to collect evidence, including photographs, films, audio, video and other recordings. Currently, a search warrant is required, which is expensive, time consuming and difficult to obtain. Information I obtained from the City of Ryde reveals that, notwithstanding the large number of reported unauthorised boarding houses in the area, not one search warrant was sought or issued during 2009-10. The power to enter premises to monitor compliance or to investigate without a search warrant exists in Victoria and has been in force for many years.

The power to enter premises on reasonable suspicion without notice is a significant power. We must always be vigilant to ensure that with every increase in State power there is a commensurate increase in the power of the individual to scrutinise the actions of the State. We must ensure that there are checks and balances to safeguard against the possible abuses of State power. The protection of the individual's rights against abuses of State power is, in my mind, one of the most important bastions that we, as members of Parliament, are charged with defending. Consistent with that position, the bill provides for the Ombudsman to review the use of the entry powers of councils and authorised officers. If a council or an authorised officer acts beyond the limits of these powers, the Ombudsman will be able to investigate any complaints made and recommend an award for damages in the event that the power was inappropriately exercised.

Schedule 1, clause 6 essentially provides that, if council has evidence of alteration of the premises that is consistent with its use as a boarding house, prima facie it is a boarding house unless the owner or occupier can prove otherwise. The ability to inspect boarding houses and to put the onus on the owner to disprove the existence of a boarding house when there is overwhelming evidence to the contrary makes common sense and will greatly assist councils with enforcement. On the issue of deterrence, schedule 2 to the bill will now impose significant penalties for operating an illegal boarding house. The penalties will now be \$5,500 to \$11,000 for an individual and \$11,000 to \$22,000 for corporations. Further, schedule 1, clause 5 now imposes a criminal sanction of up to six months imprisonment or \$1,100,000, or both, for a person who is guilty of operating a boarding house in circumstances where the offence caused or contributed to appreciable danger or harm to any persons.

I believe this criminal penalty will send a powerful shockwave to unscrupulous operators who are prepared to sacrifice the lives of vulnerable students, lodgers and boarders in pursuit of profit. Given the many incidents over the years of fires in backpackers' hostels and boarding houses leading to serious injuries and death, this specific criminal penalty is appropriate. Just recently there was a report of a boarding house fire in Darlinghurst that claimed a life. I note that in the Australian Capital Territory there is a criminal penalty of up to six months imprisonment for operating a boarding house without a licence. This bill provides a real and substantial disincentive against unscrupulous operators of illegal boarding houses.

Schedule 1, clause 6 also provides a mechanism for registration of a boarding house with the Department of Fair Trading. This section applies to a boarding house in which sleeping accommodation is provided for, first, five or more lodgers; or, secondly, three or more lodgers in any one bedroom. This amendment requires a proprietor of a boarding house to notify the following particulars: first, the name and address of the proprietor; secondly, the

address of the boarding house; thirdly, the number of lodgers residing in the boarding house; fourthly, the total number of bedrooms provided as sleeping accommodation for those lodgers; and, fifthly, other particulars that may be prescribed in the regulations. Failure to register with the director general will incur maximum fines of 65 penalty units, or \$7,150 for individuals, and 330 penalty units for corporations, which amounts to \$36,300 under the current regime.

In Victoria, rooming houses must be registered with local councils and operators are required to provide prescribed information about the operation of premises and pay a registration fee. Importantly, a proprietor of a boarding house means, in the case of a boarding house consisting of premises that are leased, the lessee who is entitled to immediate possession of the premises, or in any other case the owner of the premises concerned. This covers the situation where the owner or landlord of the property genuinely does not know what the tenant or head lessee is doing. In a recent letter to me the Tenants Union of NSW noted that it particularly supported the establishment of a register of boarding houses. It stated:

A Register would help inform prospective residents about the legitimacy of a boarding house operator's business. It would also help inform government about the state of the boarding house sector, which would assist in the development of policies for the boarding house sector, and in fostering liaison with sector stakeholders.

The Tenancy Union of NSW noted that the boarding house sector is an important part of our housing system, but it is in bad shape. The Redfern Legal Centre noted that it needs better regulation and better support from government. Part of the problem relates to illegal boarding house operators who rent out rooms, houses and flats in cities and towns throughout New South Wales.

I have raised this issue on numerous occasions since being elected to Parliament, including in a petition signed by more than 1,000 good people of Ryde. I have repeatedly called upon the Keneally Labor Government to introduce urgent legislative reforms to address the problems caused by illegal boarding houses. Regrettably, I have received no response from the Government in relation to this issue and how it proposes to resolve it. Accordingly, it has now been necessary for me to address this issue by way of a private member's bill in an attempt to help the people of Ryde and New South Wales, who are the victims of the unscrupulous operators of illegal boarding houses.

This bill will send a powerful message to unscrupulous operators who are prepared to sacrifice the lives of those most vulnerable. It will also enhance the good name of lawful operators of boarding houses who provide an essential service to our community. It will also provide international students who are vulnerable because of their lack of understanding of English and our laws to identify safe places to live while studying in New South Wales. Further, this bill will help restore the amenity of our local community. I look forward to feedback and recommendations from key stakeholders in the sector on this bill. I also look forward to working with representatives at the local and federal level in addressing the long-term challenges of supply and demand of affordable housing stock, especially for international students, borders and lodgers. I urge the Government to support the bill. I commend the bill to the House.